

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DONTI HANSERD,

Defendant-Appellant.

UNPUBLISHED

April 18, 2006

No. 259868

Saginaw Circuit Court

LC No. 04-024484-FC

Before: Murphy, P.J., and O'Connell and Murray, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and sentenced as an habitual offender, second offense, MCL 769.10, to a prison term of 15 to 45 years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that he must be resentenced because the trial court's factual findings supporting its scoring of the sentencing guidelines offense variables were not determined by a jury, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *Blakely*, the United States Supreme Court struck down as violative of the right to jury trial under the Sixth Amendment a determinate sentencing scheme in which the sentencing judge was allowed to increase the defendant's maximum sentence on the basis of facts that were not reflected in the jury's verdict or admitted by the defendant. Our Supreme Court has stated that the holding in *Blakely* does not apply to Michigan's indeterminate sentencing scheme. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). We are bound by *Claypool*. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004).¹ Consequently, defendant's argument is without merit.

¹ Our Supreme Court granted leave to appeal in *Drohan*, limiting its review to whether *Blakely* and *United States v Booker*, 543 US 220; 125 S Ct 738; 160 L Ed 2d 621 (2005), apply to
(continued...)

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray

(...continued)

Michigan's sentencing scheme. See 472 Mich 881 (2005). The appeal before the Supreme Court remains pending.